

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

April 4, 2003

IN RE:

PETITION OF CONDO VILLAS OF GATLINBURG
ASSOCIATION, INC. D/B/A FOOTHILLS WATER
PROPERTY, INC. TO AMEND ITS CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

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) DOCKET NO.
) 02-00986
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ORDER APPROVING PETITION TO AMEND CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 27, 2003 to consider the Petition (the "*Petition*") of Condo Villas of Gatlinburg Association, Inc. d/b/a Foothills Water Property, Inc. ("Condo Villas") to amend its Certificate of Public Convenience and Necessity ("CCN") to expand its service area in Sevier County, Tennessee.

Legal Standard for Granting CCN

Condo Villas' Petition was made pursuant to and was considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

Petition to Amend CCN

The *Petition*, which was filed on September 10, 2002, states that Condo Villas owns and operates a water system under the title of Foothills Water Property, Inc. The *Petition* further states:

Recent communications with the Regulatory Authority have brought to our attention the issue of operating outside the approved boundaries of the distribution system. FOOTHILLS original owner was already servicing nine customers at the time of the approved transfer, outside the original distribution area, therefore these customers were inherited at the transfer date.

Since the transfer, only one additional customer outside the distribution area, has been added to the system. This addition was at one time on the system, however the customer at his request was disconnected. The property was sold and the new owner was operating off a well system. In 2001 the owner experienced well problems and requested to be reconnected to the system. FOOTHILLS new owner was not aware of any dis-allowable service area, nor did the new owner intend to circumvent the REGULATORY AUTHORITY.¹

The *Petition* states Condo Villas's request as follows:

FOOTHILLS WATER PROPERTY, INC. petitions the TENNESSEE REGULATORY COMMISSION, [sic] to grant approval to the system to continue to operate and provide services to those areas already described as outside the distribution area. Also, we ask for approval to provide service to future areas out-side the prescribed boundaries, which FOOTHILLS might be legally bound to service.²

The "transfer" to which the *Petition* refers was a purchase by Condo Villas from Foothills Properties, Inc. ("Foothills") of the right to provide water services to certain customers of Foothills. The Tennessee Public Service Commission ("TPSC"), in TPSC Docket No. 90-02584, granted Foothills a certificate of public convenience and necessity ("CCN") by Order dated February 28, 1992. In Docket No. 00-00046, by Order dated October 10, 2000, the TRA approved a transfer of authority to provide utility services, which Foothills derived from its CCN, from Foothills to Condo Villas pursuant to Tenn. Code Ann. § 65-4-113.³

The February 28, 1992 Order of the TPSC in TPSC Docket No. 90-02584 states: "a certificate of convenience and necessity is hereby issued to Foothills Properties, Inc. to operate a

¹ *Petition* (September 10, 2002) (No page number; emphasis in original.)

² *Id.*

³ *In re: Petition of Condo Villas of Gatlinburg Association, Inc. to Acquire Certain Assets of Foothills Properties, Inc.*, Docket No. 00-00046, *Order Approving Transfer of Authority* (October 10, 2000).

water distribution system in Condo Villas of Gatlinburg, Sevier County, Tennessee.”⁴ Thus, the CCN originally granted to Foothills by the TPSC, and therefore the authority to provide utility services which was transferred to Condo Villas, was defined as that part of a development known as “Condo Villas” which had already been constructed and was ready to receive service at the time such authority was granted to Foothills. This original service area was not coextensive with the entire Condo Villas development but was located within this development.

Maps submitted by Condo Villas in support of the *Petition* indicate that the area for which Condo Villas requests approval to provide service extends along Fox Run Drive in Sevier County. A letter from Earl Baird, Manager/Agent of Condo Villas, to Elmer C. Williams, Utility Manager of the Gatlinburg Utility Department, which was submitted in support of the *Petition*, states that the area in question comprises 3.18 acres along Fox Run Drive and is “located inside Condo Villas of Gatlinburg.”⁵ It thus appears that this area in or contiguous to the Condo Villas service area as it existed in 1992, and located within the Condo Villas development, was not served by Foothills at the time Foothills received its CCN but began to receive service from Foothills at some time prior to Foothills’ CCN being transferred to Condo Villas, as described in the *Petition*.

With its *Petition*, Condo Villas submitted a letter from Mr. Williams dated October 1, 2002, which states that the Fox Run Drive area of Sevier County is outside the corporate limits of the City of Gatlinburg and that there are currently no plans in the City of Gatlinburg’s long range capital improvements program to provide water service to this area. Condo Villas also submitted a letter dated December 2, 2002, from Ken L. Maples, Assistant County Executive for Sevier County, which states that Sevier County has no immediate intention of providing water service to this area and does not foresee providing water service to this area within the next several years.

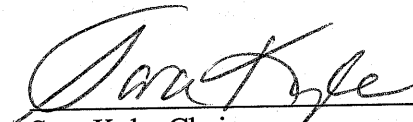
⁴ *In re: Petition of Foothills Properties, Inc. for a Certificate of Convenience and Necessity to Operate a Water Distribution System in Condo Villas of Gatlinburg, Sevier County, Tennessee*, TPSC Docket No. 90-02584, Order, p. 3 (February 28, 1992).

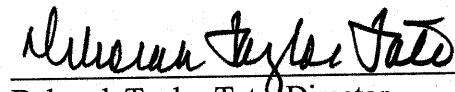
⁵ Undated letter from Earl Baird to Elmer C. Williams.

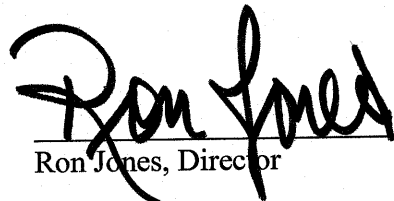
Condo Villas having stated that there is a need for service to the requested area and submitted documents showing that the nearest providers of water service do not intend to provide service to that area, the Authority finds that Condo Villas' request for authority to provide water service to this area meets the requirements of Tenn. Code Ann. § 65-4-201 and shall be granted. During the January 27, 2003 Authority Conference, upon careful consideration of the Petition and of the entire record in this matter, the panel unanimously approved the *Petition* of Condo Villas.

IT IS THEREFORE ORDERED THAT:

1. The *Petition* is approved.
2. Condo Villas is granted the authority to provide water service to an area along Fox Run Drive in Sevier County as designated in maps filed in support of the *Petition*.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Ron Jones, Director